Circuit Court for Talbot County
Case No. C-20-JG-16-000170

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 71

September Term, 2017

BILLY G. ASEMANI

v.

ISLAMIC REPUBLIC OF IRAN

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 2, 2018

Billy Asemani, appellant, filed, in the Circuit Court for Talbot County, a complaint against the Islamic Republic of Iran ("Iran"). Asemani's complaint alleged that Iran had engaged in an "extrajudicial taking" of real property owned by him in Iran (the "Property"), which Iran first seized when Asemani fled the country in October of 2000 and later "allocated" to the Islamic Revolutionary Guards Corps ("IRGC") in August of 2016. Asemani also maintained that, although Iran would ordinarily be immune from suit pursuant to the Foreign Sovereign Immunities Act ("FSIA"), it was exempt from immunity under the "expropriation exception" contained in 28 U.S.C. § 1605(a)(3).

Following the filing of Asemani's complaint, the circuit court, acting *sua sponte*, dismissed the complaint "for want of jurisdiction." In this appeal, Asemani contends that the circuit court erred in dismissing his complaint. Asemani's sole argument is that the court had jurisdiction to hear his claim because state courts have concurrent jurisdiction with federal courts under the FSIA.

We hold that the circuit court did not err in dismissing Asemani's complaint. The FSIA states, in pertinent part, that "a foreign state shall be immune from jurisdiction of the courts of the United States and of the States except as provided in sections 1605 and 1607 of this chapter." 28 U.S.C. § 1604. "The [FSIA] 'provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country.'" *OBB Personenverkehr AG v. Sachs*, 136 S.Ct. 390, 393 (2015) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989)). When a defendant is a foreign sovereign (which Asemani concedes is the case here), that defendant is "entitled to immunity unless one of the statutory exceptions applies." *Cargill Intern. S.A. v. M/T Pavel Dybenko*, 991 F.2d

1012, 1016 (2nd Cir. 1993). In such a situation, "the plaintiff has the burden of going forward with evidence showing that, under exceptions to the FSIA, immunity should not be granted[.]" *Id.* Moreover, "the FSIA 'must be applied by the district courts in every action against a foreign sovereign, since subject-matter jurisdiction in any such action depends on the existence of one of the specified exceptions to foreign sovereign immunity.'" *Amerada Hess Shipping Corp.*, 488 U.S. at 434-35 (citations omitted).

The question here, therefore, is whether Asemani has pled sufficient facts to invoke the circuit court's jurisdiction. As noted, Asemani has asserted the "expropriation exception" contained in § 1605(a)(3):

> A foreign state shall not be immune from the jurisdiction of the United States or of the States in any case . . . in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in commercial activity in the United States[.]

28 U.S.C. § 1605(a)(3).

Clearly, the first part of § 1605(a)(3) is not applicable here because the property at issue – real property located in Iran – is not "present in the United States." *See* 28 U.S.C. § 1603(c) ("The 'United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States."). Therefore, to invoke the court's jurisdiction under § 1605(a)(3), Asemani had to establish: 1) that the Property was taken in violation of international law; 2) that the Property is owned or operated by an agency or

instrumentality of Iran; and 3) that the agency or instrumentality is engaged in commercial activity in the United States. 28 U.S.C. §1605(a)(3).

As to the first prong, Asemani failed to establish that his Property was taken in violation of international law. According to Asemani's complaint, Iran seized the Property when he fled the country in the year 2000; however, the complaint is silent as to whether Asemani was an Iranian national at the time, so it is unclear as to whether the expropriation exception would even apply in Asemani's case. *See Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 711 (9th Cir. 1992) (noting that § 1605(a)(3) does not apply to a sovereign state's expropriation of its own citizen's property). Moreover, although Asemani's complaint discusses how the expropriation of his Property violated several federal, state, and "universal" laws, the complaint fails to assert, with any substance, how those abuses constituted a violation of international law. *See Bolivarian Republic of Venezuala v. Helmerich & Payne Intern. Drilling Co.*, 137 S.Ct. 1312, 1316 (2017) ("[F]acts bring the case within the scope of the expropriation exception only if they do show (and not just arguably show) a taking of property in violation of international law.")

Asemani's complaint also fails to establish that the IRGC is an agency or instrumentality of Iran. An "agency or instrumentality of a foreign state" is defined, in pertinent part, as "any entity . . . which is a separate legal person, corporate or otherwise [.]" 28 U.S.C. § 1603(b). Although Asemani makes the bald assertion that the IRGC is an agency or instrumentality of the Iranian Government, he fails to include any facts to support that claim. That said, pertinent case law suggests that the IRGC is not a "separate legal person" but rather part and parcel of Iran's government. *See, e.g., Cohen v. Islamic*

Republic of Iran, 238 F.Supp.3d 71, 80-81 (D.D.C. 2017) ("[I]t is well-established by courts in this district that [the Iranian Ministry of Information and Security] and IRGC are the functional equivalent of Iran, thus qualifying as 'foreign states' as defined by the FSIA."); *Prevatt v. Islamic Republic of Iran*, 421 F.Supp.2d 152, 162 (D.D.C. 2006) ("[T]he IRGC's primary function is paramilitary, and 'a nation's armed forces are clearly on the governmental side.'") (citations omitted); *See also* 28 U.S.C. § 1603(a) (defining "foreign state" to include "a political subdivision of a foreign state **or** an agency or instrumentality of a foreign state as defined in subsection (b)."") (emphasis added).

Finally, even if the IRGC were considered an agent or instrumentality of Iran, Asemani has failed to establish that the IRGC is engaged in commercial activity in the United States. The only fact alleged by Asemani in support is that "the Boeing corporation" and "others" have "signed multi-billion dollar contracts with Iran and with its formidable IRGC." Even if true, Asemani's claim does not establish that the IRGC is engaged in commercial activity *in the United States*.

In sum, Asemani failed to carry his burden of establishing the "expropriation exception" to Iran's sovereign immunity, and, as a result, the circuit court did not have jurisdiction to hear his claim. Consequently, the court did not err in dismissing Asemani's

complaint. *Miseveth v. Aelion*, 235 Md. App. 250, 256 (2017) (noting that the issue of subject matter jurisdiction can be raised at any time).

JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.